

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10323-RWZ

JOHN EVANS

v.

PAUL VERDINI

ORDER ON APPLICATION FOR CERTIFICATE OF APPEALABILITY

August 8, 2005

ZOBEL, D.J.

Petitioner requests a certificate of appealability with respect to three issues:

1. The state court record reflects that the trial judge limited the examination of the prospective defense witness, Hawkins. Petitioner asserts that the ruling deprived him of his Sixth Amendment rights by effectively foreclosing all examination of the witness. Whether the Supreme Judicial Court correctly decided the issue is not so clear as to be frivolous.
2. Petitioner argues that the prosecution's witness, Marvette Neal, should not have been permitted to testify because the testimony had no evidentiary value. I denied the claim because it was unexhausted. While petitioner barely paid lip service to the federal constitutional underpinnings of this claim in the state court, it is possible that another court would disagree with my conclusion that he failed adequately to raise it.
3. The trial judge did not allow petitioner to cross examine a cooperating

witness on the details of the crimes included in his criminal record, and petitioner asserts he thus violated petitioner's Sixth Amendment rights. Since there is no room for disagreement with that ruling, the certificate of appealability is denied as to this ground.

In summary, the certificate of appealability is granted as to grounds 1 and 2; it is denied as to ground 3.

DATE

RYA W. ZOBEL
UNITED STATES DISTRICT COURT